Paul Raj a/l Samy Raj v Pulau Pinang Clinic Sdn Bhd (owner of Hospital Gleneagles Penang) & Ors

HIGH COURT (PULAU PINANG) — CIVIL SUIT NO PA-23NCVC-3–01 OF 2021
KENNETH ST JAMES JC
26 APRIL 2023

Limitation — Negligence — Medical negligence — Plaintiff commenced action for medical negligence against defendants — Defendants argued action time-barred and applied to strike out action — When time started to run — Whether plaintiff's claim time-barred — Limitation Act 1953 ss 6 & 6A

In October 2014, the plaintiff did a general medical check-up in India. From an ultrasound, he was informed that there appeared to be a growth (a cyst) on his left kidney. On 10 November 2014, the plaintiff went to the first defendant to get his left kidney CT-scanned. The third defendant ('D3') did an ultrasound scan of the plaintiff and found a mass on the plaintiff's left kidney. D3 referred the plaintiff to the fourth defendant ('D4') to do a CT scan and D4 reported that the plaintiff's left kidney had a mass, and that it was cancerous. With D4's report, D3 diagnosed that the plaintiff had cancer of the left kidney. D3 advised an immediate nephrectomy — to remove the kidney by surgery — to avoid the spread of the cancer to other parts of the plaintiff's body. D3 referred the plaintiff to consult the second defendant ('D2') for D2 to perform the surgery. On the next day ie 11 November 2014, the plaintiff consulted D2 and D2 reinforced the advice to have the plaintiff's left kidney immediately removed. Over the next three years the plaintiff monitored his left kidney. Then on 22 August 2019 he consulted Dr Wong Kai Cheng ('Dr Wong'), a nephrologist who perused the CT scan produced by D4. Dr Wong advised the plaintiff that he was near-certain that the plaintiff did not have cancer of the left kidney. Dr Wong referred the plaintiff to Dato' Dr Adnan Ramli ('Dato' Dr Adnan') to do a CT urography, which analysed the kidneys. Dato' Dr Adnan also opined that the plaintiff did not have cancer of the left kidney. The plaintiff asserted that D2, D3 and D4 misdiagnosed and misadvised him, causing him mental and emotional suffering, psychological distress, hypertension and 'restless syndrome'. The plaintiff filed this suit on 25 January 2021 and D2, D3 and D4 applied to strike out the plaintiff's claim for being time-barred.

Held, striking out the plaintiff's claim and allowing the defendants' striking out application:

(1) The plaintiff's cause of action arose when the alleged misdiagnosis and misadvise occurred. Therefore, the earliest date that the plaintiff could have sued D3 and D4 was 10 November 2014, and D2 was 11 November 2014. So the limitation period started to run on the plaintiff's action against D3 and D4 from 10 November 2014, and against D2 from 11 November 2014 (see paras 34–35).

(2) The last date that the plaintiff could have filed this action against D3 and D4 was 10 November 2020, and as against D2 was 11 November 2020. When the plaintiff consulted Dr Wong and Dato' Dr Adnan on 22 August 2019, and discovered the alleged misdiagnosis, he was well within the limitation period to file this action. He eventually filed this action on 25 January 2021, making him approximately six weeks out-of-time. Section 6A of the Limitation Act 1953 ('the Act') did not assist the plaintiff because, firstly, s 6A(1) of the Act disclosed that it 'shall apply to any action for damages for negligence not involving personal injury'. The plaintiff's medical negligence action was obviously an action for personal injury. Secondly, the 'Penyata Rasmi Parlimen Dewan Rakyat' ('the Hansard') that related to the Limitation (Amendment) Bill 2018, which led to the introduction of s 6A, contained a statement to the effect that s 6A of the Act would only apply to negligence cases that did not involve personal injury. The Hansard also disclosed that one of the purposes of s 6A of the Act was to give to a plaintiff in negligence cases for latent damage in a construction case, a limitation period of three years from the date of the plaintiff's knowledge of the damage. The plaintiff's action for 'mental and emotional suffering, psychological distress, hypertension and restless syndrome' were in fact physical injuries. Hypertension was undeniably a physical physiological condition. As for the mental, emotional, and psychological conditions pleaded, s 14(3) of the Civil Law Act 1956 defined 'personal injury', for the purposes of that section, to include a person's physical and mental condition. The plaintiff's injuries could not be categorised as a claim for damages not involving personal injuries. Therefore s 6A of the Act did not apply to the plaintiff's action (see paras 38–39, 46–48, 53–54, 56, 62 & 67).

[Bahasa Malaysia summary

Pada Oktober 2014, plaintif melakukan pemeriksaan perubatan am di India. Daripada ultrabunyi, dia dimaklumkan bahawa kelihatan ada ketumbuhan (sista) pada buah pinggang kirinya. Pada 10 November 2014, plaintif pergi ke defendan pertama untuk mendapatkan imbasan CT buah pinggang kirinya. Defendan ketiga ('D3') melakukan imbasan ultrabunyi ke atas plaintif dan mendapati ada satu jisim pada buah pinggang kiri plaintif. D3 merujuk plaintif kepada defendan keempat ('D4') untuk melakukan imbasan CT dan D4 melaporkan bahawa buah pinggang kiri plaintif mempunyai jisim, dan ia adalah kanser. Dengan laporan D4, D3 mendiagnosis plaintif menghidap

kanser buah pinggang kiri. D3 menasihatkan nefrektomi segera — untuk membuang buah pinggang melalui pembedahan — untuk mengelakkan penyebaran kanser ke bahagian lain badan plaintif. D3 merujuk plaintif untuk berunding dengan defendan kedua ('D2') bagi D2 melakukan pembedahan. Pada hari berikutnya iaitu 11 November 2014, plaintif berunding dengan D2 dan D2 mengukuhkan nasihat supaya buah pinggang kiri plaintif segera dikeluarkan. Dalam tempoh tiga tahun seterusnya plaintif memantau buah pinggang kirinya. Kemudian pada 22 Ogos 2019 plaintif berunding dengan Dr Wong Kai Cheng ('Dr Wong'), pakar nefrologi yang meneliti imbasan CT yang dihasilkan oleh D4. Dr Wong menasihatkan plaintif bahawa dia hampir pasti bahawa plaintif tidak menghidap kanser buah pinggang kiri. Dr Wong merujuk plaintif kepada Dato' Dr Adnan Ramli ('Dato' Dr Adnan') untuk melakukan urografi CT, yang menganalisis buah pinggang. Dato' Dr Adnan juga berpendapat bahawa plaintif tidak menghidap kanser buah pinggang kiri. Plaintif menegaskan bahawa D2, D3 dan D4 salah mendiagnosis dan salah nasihatnya, menyebabkan dia mengalami penderitaan mental dan emosi, tekanan psikologi, hipertensi dan 'restless syndrome'. Plaintif memfailkan saman ini pada 25 Januari 2021 dan D2, D3 dan D4 memohon untuk membatalkan tuntutan plaintif kerana dihalang had masa.

Diputuskan, membatalkan tuntutan plaintif dan membenarkan permohonan pembatalan defendan:

(1) Kausa tindakan plaintif timbul apabila salah diagnosis dan salah nasihat yang dikatakan berlaku. Oleh itu, tarikh paling awal plaintif boleh menyaman D3 dan D4 adalah pada 10 November 2014, dan D2 adalah pada 11 November 2014. Jadi tempoh had masa mula berjalan ke atas tindakan plaintif terhadap D3 dan D4 mulai 10 November 2014, dan terhadap D2 mulai 11 November 2014 (lihat perenggan 34–35).

(2) Tarikh terakhir plaintif boleh memfailkan tindakan ini terhadap D3 dan D4 adalah pada 10 November 2020, dan terhadap D2 ialah 11 November 2020. Apabila plaintif berunding dengan Dr Wong dan Dato' Dr Adnan pada 22 Ogos 2019, dan mendapati salah diagnosis yang didakwa, dia berada dalam tempoh had untuk memfailkan tindakan ini. Dia akhirnya memfailkan tindakan ini pada 25 Januari 2021, menjadikannya lebih kurang enam minggu di luar masa. Seksyen 6A Akta Had 1953 ('Akta') tidak membantu plaintif kerana, pertama, s 6A(1) Akta mendedahkan bahawa ia 'hendaklah terpakai untuk sebarang tindakan bagi ganti rugi kerana kecuaian yang tidak melibatkan kecederaan diri'. Tindakan kecuaian perubatan plaintif jelas merupakan tindakan untuk kecederaan diri. Kedua, Penyata Rasmi Parlimen Dewan Rakyat ('Hansard') yang berkaitan dengan Rang Undang-Undang Had Masa (Pindaan) 2018, yang membawa kepada pengenalan s 6A, mengandungi kenyataan yang bermaksud bahawa s 6A Akta itu hanya akan terpakai kepada kes kecuaian yang tidak melibatkan

kecederaan diri. Hansard juga mendedahkan bahawa salah satu tujuan s 6A Akta adalah untuk memberi plaintif dalam kes kecuaian bagi ganti rugi latent dalam kes pembinaan, tempoh had selama tiga tahun dari tarikh plaintif mengetahui kerosakan itu. Tindakan plaintif untuk penderitaan mental dan emosi, tekanan psikologi, hipertensi dan 'restless syndrome' sebenarnya adalah kecederaan fizikal. Hipertensi tidak dapat dinafikan adalah keadaan fisiologi fizikal. Bagi keadaan mental, emosi, dan psikologi yang dipohon, s 14(3) Akta Undang-Undang Sivil 1956 mentakrifkan 'kecederaan diri', bagi tujuan seksyen itu, untuk termasuk keadaan fizikal dan mental seseorang. Kecederaan plaintif tidak boleh dikategorikan sebagai tuntutan ganti rugi yang tidak melibatkan kecederaan peribadi. Oleh itu s 6A Akta tidak terpakai kepada tindakan plaintif (lihat perenggan 38–39, 46–48, 53–54, 56, 62 & 67).]

Cases referred to

AmBank (M) Bhd v Abdul Aziz bin Hassan & Ors [2010] 3 MLJ 784; [2010] 7 CLJ 663, CA (refd)
Corr v IBC Vehicles Ltd [2008] 1 AC 884, HL (refd)
Lee Kim Noor & Anor v Julian Chong Sook Keong & Anor [2022] 2 MLJ 338; [2021] 8 CLJ 852; [2021] AMEJ 1028, CA (refd)
Nasri v Mesah [1971] 1 MLJ 32; [1970] 1 LNS 85, FC (refd)
Page v Smith [1996] AC 155, HL (refd)
Vista Specialist Eye Center Sdn Bhd v Dato' Loo Son Yong and another appeal [2016] 5 MLJ 832; [2016] AMEJ 1712; [2016] 1 LNS 1127, CA (folld)

Legislation referred to

Civil Law Act 1956 s 14(3)
Limitation Act 1953 ss 6, 6(1), 6A, 6A(1), (3)
Limitation Act 1959 [SG] s 2
Limitation Act 1980 [UK] s 38(1)
Rules of Court 2012 O 18 r 19, 19(1), (1)(d)

Vimalan a/l S Visvalingam (AG Roseli & Paul) for the plaintiff.
Michelle Khor Chew Hong (Raja, Darryl & Loh) for the second, third and fourth defendants.

Kenneth St James JC:

PRELUSION

[1] The plaintiff sues the doctors whom he alleges misdiagnosed and misadvised him. He also sues the clinic at which the doctors practise medicine.

[2] The doctors apply to strike out the plaintiff's claim for being time-barred. Should the plaintiff's claim be stuck out?

Preliminary note

[3] The second and fourth defendants together file an application to strike out the plaintiff's claim as against them. The third defendant files a separate application to strike out the plaintiff's claim. Their solicitors inform me that they file separate applications to strike out because they have different indemnifiers (insurers).

[4] I will, however, deal with both applications to strike out in this judgment.

THE PERTINENT PLEADED FACTS

[5] These are the plaintiff's pertinent pleaded facts.

[6] In October 2014, the plaintiff did a general medical check-up in India. From an ultrasound, he was informed that there appeared to be a growth (a cyst) on his left kidney. He was advised to verify this information by doing a CT scan, as it is more accurate.

[7] In November 2014 (on 10 November 2014), the plaintiff went to the first defendant hospital to get his left kidney CT-scanned. He consulted the third defendant ('D3'). D3 is a nephrologist, a kidney specialist.

[8] D3 did an ultrasound scan of the plaintiff and found a mass on the plaintiff's left kidney.

[9] D3 referred the plaintiff to the fourth defendant ('D4') to do a CT scan. D4 did the CT scan and reported that the plaintiff's left kidney had a mass, and that it was cancerous.

[10] With D4's report, D3 diagnosed that the plaintiff had cancer of the left kidney. D3 advised an immediate nephrectomy — to remove the kidney by surgery — to avoid the spread of the cancer to other parts of the plaintiff's body.

[11] As D3 did not perform surgeries, D3 referred the plaintiff to consult the second defendant ('D2'), who is an urologist, for D2 to perform the surgery.

[12] On the next day (11 November 2014), the plaintiff consulted D2. D2 reinforced the advice to have the plaintiff's left kidney immediately removed.

[13] I will refer to D2, D3 and D4 together as 'D2D3D4'.

[14] Over the next three years (from January 2015 to May 2018), the plaintiff monitored his left kidney. He did six ultrasound scans at an x-ray specialist centre. He also went to a health care centre for alternative medicine treatment on eight occasions. And he did nine ultrasounds and CT scans at another hospital.

[15] Then in August 2019 (on 22 August 2019), he consulted Dr Wong Kai Cheng, a nephrologist. When Dr Wong perused the CT scan produced by D4, Dr Wong advised the plaintiff that he was near-certain that the plaintiff did not have cancer of the left kidney.

[16] Dr Wong referred the plaintiff to Dato' Dr Adnan Ramli to do a CT urography, which analyses the kidneys. Dato' Dr Adnan also opined that the plaintiff did not have cancer of the left kidney.

[17] The plaintiff asserts that D2D3D4 misdiagnosed and misadvised him, causing him mental and emotional suffering, psychological distress, hypertension and what he calls 'restless syndrome'.

[18] The plaintiff filed this suit in January 2021.

THE AGREED CHRONOLOGY

[19] The following dates and facts are extracted and deduced from the common chronology of facts, which were agreed to by the parties:

(a) 10 November 2014: D3's ultrasound scan, discovering a left renal mass, and D4's CT scan, with the report of a mass on the left kidney; and

(b) 11 November 2014: D2 diagnosed cancer of the left kidney and advised a nephrectomy.

[20] D2D3D4 assert that there was no communication between the plaintiff and them after the two dates above. I also find that there is no evidence to disclose that there was any communication between the plaintiff and D2D3D4 after these two dates.

[21] The plaintiff asserts that the tort of negligence that was committed upon him were D3D4's (on 10 November 2014) and D2's (on 11 November 2014) misdiagnosis and misadvice about the cancer of the left kidney.

[22] A continuation of the chronology:

(c) 22 August 2019: Dr Wong's diagnosis — the date the plaintiff discovered the alleged misdiagnosis;

*Note: 14 months and 20 days remaining to file the action before the six year time limit expired.

(d) 11 November 2020: six years from 11 November 2014; and

(e) 25 January 2021: the plaintiff filed this suit — arguably out-of-time by one month and 13 days (against D3D4), and one month and 14 days (against D2).

FIRST ISSUE: WHEN DOES TIME START TO RUN?

[23] The first question to answer when I compute the limitation period is — on what date did time start to run on the plaintiff's medical negligence claim? The answer is that time started to run from the earliest date that the plaintiff could have filed this action — *Nasri v Mesah* [1971] 1 MLJ 32; [1970] 1 LNS 85 (FC).

[24] In *Nasri v Mesah*, the Federal Court propounded (at p 34):

> A 'cause of action' is the entire set of facts that gives rise to an enforceable claim; ... In *Reeves v Butcher* (1891) 2 QB 590 p 511 Lindley LJ said:
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> > ... The right to bring an action may arise on various events; but it has always been held that *the statute runs from the earliest time at which an action could be brought.* (Emphasis added.)

[25] The *Malaysian Civil Procedure 2021 (White Book)*, Volume II (Sweet & Maxwell), at p 1105, at F/6/7, at the heading 'actions founded on a tort', explained that the limitation period on actions founded on tort runs 'on the commission of the wrong', or 'accrues when loss and damage occur'.

[26] The plaintiff, in his statement of claim (at para 38) pleaded that since 10 November 2014, due to the alleged misdiagnosis by D2D3D4, he began suffering mental and emotional pressure, psychological distress, hypertension and the restless syndrome.

Does time start to run from when the negligence was committed, or from when the negligence was discovered?

[27] D3D4's and D2's alleged negligence were committed on 10 November 2014 and 11 November 2014 respectively. The case law authorities and legal commentaries support the finding that time started to run from these effective dates.

[28] But the plaintiff raised the argument that time started to run only when the plaintiff *discovered* the alleged negligence, namely when he subsequently consulted Dr Wong and Dato' Dr Adnan on 22 August 2019. Computing six years from 22 August 2019 brings us to 22 August 2025. And thus the argument is that filing this action on 25 January 2021 was well within time.

[29] This argument, however, is not the correct position of the law in Malaysia. In Malaysia, time starts to run from the date the cause of action arose (the date the negligence was committed or the date that loss, damage or injury were caused), not from the date that the plaintiff discovered the negligence or loss, damage or injury — *AmBank (M) Bhd v Abdul Aziz bin Hassan & Ors* [2010] 3 MLJ 784; [2010] 7 CLJ 663 (CA).

[30] *AmBank* was cited with approval in *Lee Kim Noor & Anor v Julian Chong Sook Keong & Anor* [2022] 2 MLJ 338; [2021] 8 CLJ 852; [2021] AMEJ 1028, when the Court of Appeal reinforced this principle:

> [33] **We are of the considered opinion that a cause of action in tort arises when the plaintiffs suffered damage.** The issue of when the cause of action for a tort arises, was dealt with, in *AmBank (M) Bhd v Abdul Aziz bin Hassan & Ors* [2010] 3 MLJ 784; [2010] 7 CLJ 663 where the Court of Appeal held that:
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> > [34] It is trite law that a *cause of action founded in tort accrues when the appellant suffers damage* (*Goh Kiang Heng v Hj Mohd Ali bin Hj Abd Majid*).
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> ...
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> [36] We are also of the considered opinion that in the context of the factual matrix of the present suit, the six years as stated in s 6 of the Limitation Act 1953 starts to run from the date, the cause of action accrues and not when the plaintiffs discovered the damage. We find support in *AmBank (M) Bhd v Abdul Aziz bin Hassan & Ors*, where Abdul Malik Ishak JCA held:
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> > So the position, in Malaysia, remains the same and that would be that *limitation runs from the date on which the cause of action accrues regardless of whether the plaintiff discovers the damage.* (Emphasis added in bold.)

[31] I am also guided and bound by the case law authority of *Vista Specialist Eye Center Sdn Bhd v Dato' Loo Son Yong and another appeal* [2016] 5 MLJ 832; [2016] AMEJ 1712; [2016] 1 LNS 1127 (CA). *Vista* is a medical negligence action, where the defendant-appellant there applied to strike out the action on the ground of limitation. The issue that arose was about the computation of the limitation period. The High Court dismissed the striking out application. On appeal, the Court of Appeal reversed the decision of the High Court, that is, the Court of Appeal struck out the action.

[32] The Court of Appeal enunciated that it was an error for the High Court to have decided that time started to run from the date the negligence was discovered, or the date the damage (injury) was discovered. The correct principle to follow is that time started to run from the date that the cause of action arose, namely when the negligence was committed, or when the damage (injury) was suffered.

[33] In *Vista*, the Court of Appeal held:

> [8] ... *In our view the above provision is clear that the computation of six years limitation must run from the date the cause of action arose and not from the time the alleged negligence was so discovered*. If any further authority is required to explain the clear provision of the law we would refer to the decision of this court in *AmBank (M) Bhd v Abdul Aziz bin Hassan & Ors* [2010] 3 MLJ 784; [2010] 7 CLJ 663 (CA). In interpreting s 6(1) it was held in that case that the cause of action by the bank accrued and began to run from the alleged date of breach and not on the date such breach was discovered ...
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> [9] In *Credit Corporation (M) Bhd v Fong Tak Sin* [1991] 1 MLJ 409, the Supreme Court held that the cause of action accrued when there exists a person who can sue and another who can be sued and once all facts have happened which are material to be proved, to entitle the plaintiff to succeed.
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> [10] Having considered the above cases in our view the learned High Court *judge had fallen into error in his judgment to have found that the cause of action in this case may have accrued not on the date of the surgery itself but could be the date the damage was discovered.* Since the legal position on the application of limitation is clear we find no reason for this claim to proceed to a full trial.
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> [11] The Federal Court as well as this court has consistently struck out claims when it is clear that the statute of limitations would be relied on or raised (see *Alias bin Ismail v Hairuddin bin Mohamad & Anor* [1997] 3 MLJ 724 and *Haji Hussin bin Haji Ali & Ors v Datuk Haji Mohamed bin Yaacob & Ors and connected cases* [1983] 2 MLJ 227).
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> [12] Likewise, the appellants in the present case were going to rely on limitation and there would be no escape for the respondent. The respondent's claim in our view clearly is barred by limitation, hence plainly unsustainable and is suitable to be struck out under O 18 r 19 of the Rules of Court 2012. Premised on the above we allowed both the appeals with costs. (Emphasis added.)

[34] Applying these principles to the pleaded facts and agreed facts in the common chronology, I find that the plaintiff's cause of action arose when the alleged misdiagnosis and misadvice occurred. I therefore hold that the earliest date that the plaintiff could have sued D3D4 was 10 November 2014, and D2 was 11 October 2014.

[35] So the limitation period started to run on the plaintiff's action against D3D4 from 10 November 2014, and against D2 from 11 November 2014.

A SECOND ISSUE: WHEN DOES TIME STOP?

[36] Section 6(1) of the Limitation Act 1953 provides that the limitation period for an action for the tort of negligence is six years from the earliest respective dates he could have filed this action against D3D4 (10 November 2014) and D2 (11 November 2014).

[37] The pertinent portions of s 6(1) is set out here:

> Section 6. Limitation of actions of contract and tort and certain other actions.
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> (1) Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say —
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> (a) actions founded on a contract or on tort; ...

[38] This means that the last date that the plaintiff could have filed this action against D3D4 was 10 November 2020, and as against D2 was 11 November 2020.

[39] When the plaintiff consulted Dr Wong and Dato' Dr Adnan on 22 August 2019, and discovered the alleged misdiagnosis, he was well within the limitation period to file this action. He had more than 14 months to file. But he did not file. He eventually filed this action on 25 January 2021, making him approximately six weeks out-of-time.

Does s 6A of the Limitation Act 1953 apply?

[40] The plaintiff submits that instead of s 6, it is s 6A of the Limitation Act 1953 that applies to his action. The plaintiff mounts two arguments with s 6A.

[41] First, D2D3D4 pleaded limitation in their defences. The plaintiff, in his respective replies to them, pleaded that since he discovered D2D3D4's negligence (the alleged misdiagnosis) on 22 August 2019 — the date he went to see Dr Wong and Dato' Dr Adnan — he had three years from 22 August 2019 to file this action, relying on s 6A.

[42] Three years from 22 August 2019 would bring him to 22 August 2022. He filed this action on 25 January 2021. He asserts that he was within time.

[43] Second, he argues that s 6A(3) gives him 15 years from the date of the misdiagnosis and misadvice ie 10 November 2014 (for D3D4) and 11 November 2014 (for D2), to file his action. 15 years from these two dates will bring him to 10 November 2029 and 11 November 2029. And as he filed

this action in 2021, he is well within time. A

[44] I find the plaintiff's arguments untenable. My reasons follow.

[45] It is helpful to first refer to the terms of s 6A. The pertinent portions of s 6A are set out here. I have included the illustrations under s 6A for reference because of a point that I will make below: B

> Section 6A Limitation of actions to claim damages for negligence not involving personal injuries
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> (1) Notwithstanding subsection 6(1), *this section shall apply to any action for damages for negligence not involving personal injuries*, where the starting date for calculating the period of limitation under subsection (2) falls after the date on which the cause of action accrued. C
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> (2) An action to which this section applies shall not be brought after the expiration of three years *from the starting date if the period of three years expires later than the period of limitation prescribed in subsection 6(1).* D
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> ILLUSTRATIONS
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> (a) *C* bought a house from *D* in 2000. In 2010, *C* discovered a crack which damaged the walls badly. A building report made by a consultant revealed that the cracks had occurred in 2002, two years after *C* moved into the house. *C* has three years from 2010 to file an action in court against *D* for damages. E
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> (b) *C* bought a house from *D* in 2000. In 2006, *C* discovered a crack which damaged the walls badly. A building report made by a consultant revealed that the cracks had occurred in 2002, two years after *C* moved into the house. *C* has three years from 2006 to file an action in court against *D* for damages. F
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> (c) *C* bought a house from *D* in 2000. In 2005, *C* discovered a crack which damaged the walls badly. A building report made by a consultant revealed that the cracks had occurred in 2002, two years after *C* moved into the house. *C* has three years from 2005 to file an action in court against *D* for damages. G
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> (3) *Notwithstanding subsection (2), no action shall be brought after the expiration of fifteen years from the date on which the cause of action accrued.* H
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> ILLUSTRATION
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> *C* bought a house from *D* in 2000. In 2017, *C* discovered a crack which damaged the walls badly. A building report made by a consultant revealed that the cracks had occurred in 2001, one year after *C* moved into the house. *C* cannot commence an action because he has already exceeded the fifteen-year limitation period. I
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> (4) For the purposes of this section —

A (a) *'starting date'* means *the earliest date on which the plaintiff* or any person in whom the cause of action was vested before him *first had both the knowledge required for bringing an action for damages* in respect of the relevant damage *and a right to bring such action.*

B **[46]** I find that s 6A does not assist the plaintiff because, firstly, s 6A(1) discloses that it 'shall apply to any action for damages for negligence not involving personal injury'. The plaintiff's medical negligence action here is obviously an action for personal injury.

C **[47]** Secondly, the 'Penyata Rasmi Parlimen Dewan Rakyat' dated 3 April 2018 for the 'Parlimen Ke-13, Penggal 6, Mesyuarat Pertama' (the Hansard) that relate to the *Limitation (Amendment) Bill 2018*, which led to the introduction of s 6A, contains a statement to the effect that s 6A will only apply to negligence cases that *do not involve personal injury*.

D **[48]** The Hansard also discloses that one of the purposes of s 6A is to give to a plaintiff in *negligence cases for latent damage in a construction case*, a limitation period of three years from the date of the plaintiff's knowledge of the damage.

E **[49]** The Hansard provides:

> Fasal 2, bertujuan memasukkan seksyen baharu 6A ke dalam Akta 254 untuk membolehkan seseorang untuk mengambil *tindakan berasaskan kecuaian yang tidak melibatkan kecederaan diri* dengan membenarkan pelanjutan had masa tiga tahun
F daripada tarikh pengetahuan orang yang mempunyai kausa tindakan itu. Peruntukan ini mengambil kira *kes kecuaian yang melibatkan kerosakan pendam dalam kes pembinaan.* (Emphasis added.)

[50] I conclude that s 6A of the Limitation Act 1953 does not assist the
G plaintiff on the issue of limitation. Section 6A simply does not apply to his medical negligence cause of action, nor to the facts of his action.

Is a claim for damages for mental and emotional injury, a claim for personal injury?

H **[51]** The plaintiff's prayers include a claim for the remedy of RM5m as damages for 'mental and emotional stress'.

[52] The plaintiff submits that his action is for 'mental and emotional suffering, psychological distress, hypertension and restless syndrome'. He
I argues that these are *not* physical injuries. And as they are *not* physical injuries,

his action is not an action for personal injury. A

[53] Contrary to the plaintiff's submission, I find that such injuries are in fact physical injuries.

[54] First of all, hypertension is undeniably a physical physiological condition. B

[55] As for the mental, emotional, and psychological conditions pleaded, I find guidance in the definition given to 'personal injury' in statute law. C

[56] Section 14(3) of the Civil Law Act 1956 defines 'personal injury', for the purposes of that section, to include a person's physical and mental condition.

[57] Also, statute law from other Commonwealth jurisdictions, as well as case law, guide me further. Section 2 of the Singapore Limitation Act 1959 define 'personal injuries' to include 'any disease and any impairment of a person's physical *or mental* condition'. D

[58] Section 38(1) of the UK Limitation Act 1980 identically define 'personal injuries' to include 'any disease and any impairment of a person's physical *or mental* condition'. E

[59] *Black's Law Dictionary*, Bryan A Garner (11th Ed, Thomson Reuters) at p 939, define 'personal injury' to include 'mental suffering'. F

[60] The UK House of Lords judgment in *Page v Smith* [1996] AC 155 (HL), at p 188, para F and at p 197, para G, enunciated that the distinction between physical and psychiatric injury 'seem somewhat artificial', and further remarked that 'nothing will be gained' by treating them — that is, physical injury and psychiatric injury — as 'different 'kinds' of personal injury'. G

[61] Then the House of Lords case of *Corr v IBC Vehicles Ltd* [2008] 1 AC 884 (HL) put this issue to rest by propounding, at p 900, para A, that 'personal injury must be understood as embracing both physical and psychological injury'. H

[62] I therefore find that the plaintiff's injuries cannot be categorised as a claim for damages not involving personal injuries. He asserts that he suffered 'mental and emotional stress'. That injury can only be categorised as nothing but 'personal injury'. I

[63] Put differently, the plaintiff's claim cannot be anything but a claim for damages for personal injury. Thus excluding the plaintiff's claim from the application of s 6A.

[64] Furthermore, we know that s 6A is for cases of latent damage in the construction industry. Even the 'Illustrations' in s 6A relate to latent damage to property constructed. I do not see how the plaintiff could possibly argue that his action is for 'latent damage in a construction case', and 'not involving personal injuries', so as to bring himself within the s 6A computation of the limitation period applicable to his action. I am not at all persuaded.

[65] It is far-fetched and incongruous to place the plaintiff's asserted injuries — mental and emotional distress — in the same category of claims as cases for latent damage in the construction industry.

[66] To sum up, s 6A of the Limitation Act 1953 does not aid the plaintiff because:

(a) his pleaded injuries are personal injuries, when instead s 6A applies only to cases for negligence not involving personal injuries; and

(b) his is a medical negligence case, when instead s 6A applies to latent damage in construction cases.

[67] I therefore hold that s 6A of the Limitation Act 1953 does not apply to the plaintiff's action.

CONCLUSION

[68] For these reasons, I allow D2D4's application to strike out the plaintiff's claim as against D2D4 in this action, as it is time-barred by our statute of limitations — the Limitation Act 1953. I similarly allow D3's application to strike out the plaintiff's claim as against D3, on the same ground.

[69] I hold that the plaintiff's writ and statement of claim as against D2D3D4 is an abuse of the process of the court, which is the ground under limb (d) of O 18 r 19(1) of the Rules of Court 2012.

[70] I therefore order that the plaintiff's writ and statement of claim be struck out as against D2D3D4, with costs of RM5,000 each for D2D4's application and D3's application respectively, to be paid by the plaintiff to D2D4 and D3 respectively, as well as RM10,000 each for this action, to be paid by the plaintiff to D2D4 and D3 respectively; all to be paid by 14 April 2023.

Plaintiff's claim struck out and defendants' striking out application allowed.

Reported by Ahmad Ismail